

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

LV, RC, AD, NA, ADJ, YG, LO, AP, RLB, RD,
and JYW, individually; and VSG, HR, CW, SS,
MG, MS, ST, RZ, MC, and JP, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

NEW YORK CITY DEPARTMENT OF
EDUCATION; NEW YORK CITY BOARD
OF EDUCATION; Richard A. Carranza, in his
individual and official capacity as Chancellor of
the New York City School District,

Defendant.

ECF CASE

No. 03 Civ. 9917 (LAP)

**ORDER IMPLEMENTING
SPECIAL MASTER'S RECOMMENDATIONS**

WHEREAS, pursuant to Section 1415 of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (the “IDEA”), and the New York State Education Law, Defendant the New York City Department of Education (the “DOE”) is responsible for implementing final impartial hearing orders (as described in Section 1415 of the IDEA);

WHEREAS, by Order dated January 28, 2021, the Court granted Plaintiffs’ motion for the appointment of a Special Master;

WHEREAS, by Order dated April 14, 2021, the Court appointed David Irwin of Thru-Ed as Special Master in this action;

WHEREAS, by Order dated May 14, 2021, the Court set forth the Special Master’s duties and scope of authority;

WHEREAS on September 2, 2021, the Court entered an Order adopting the work plan submitted by the Special Master, as modified by the May 14, 2021 Order (the “Work Plan”);

WHEREAS on March 1, 2022, the Special Master filed with the Court a report of his findings through that date;

WHEREAS on March 28, 2023, the Special Master filed with the Court a report detailing his recommendations for, *inter alia*, improvements to the DOE’s systems and processes for implementing final impartial hearing orders (the “Recommendations”); and

WHEREAS, on April 19, 2023, the parties submitted their comments on the Recommendations;

WHEREAS, on June 29, 2023, the Court held a conference with the parties to review and make determinations as to this Order,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Within three months of the date of this Order, the DOE will develop a customer

support plan, including people and tools, for the Implementation Unit to address questions from parents and providers, routing Tier II questions to Implementation Unit Implementation Managers;

2. Within three months of the date of this Order, the Special Master and DOE will identify the Key Performance Indicators (“KPIs”) for monitoring the internal administrative workflows of the Implementation Unit. KPIs will be presented to the Plaintiffs for feedback. Once the required data assets are integrated, the Implementation Unit and the DOE’s Office of General Counsel will monitor progress of implementation, and KPIs, and report on the progress of KPIs to the Special Master and Plaintiffs on a monthly basis.

3. Within two months of the date of this Order, the Special Master will identify by type of Action Item the key pain points around the implementation of payment orders and service orders. Within nine months of the date of this Order, the DOE will redesign the workflows and address key pain points around the implementation of payment orders and service orders. The DOE will document the improved processes and incorporate new workflows into trainings and communications with its staff, parents, parent attorneys and advocates, and providers;

4. Within three months of the date of this Order, the DOE will build and maintain a toolkit of existing assistive technology, schools, programs, and services that the DOE can Timely Implement (as defined in the Stipulation) any Action Items for provision of assistive technology;

5. With endorsement from Plaintiffs, DOE, OATH and NYSED leadership, within six months of the date of this Order, the DOE will research and design a web-based interface for Impartial Hearing Officers to issue decisions and build the user-friendly web form in phases to add key data points for implementation. The tool will be designed to facilitate only the procedural aspects of submitting a decision following the hearing and will allow all types of relief (whether or not commonly included in impartial hearing orders) to be ordered. The web-based interface

must include the ability to capture the decision and order, both via structured input fields (e.g., a dropdown menu) and/or in writing (e.g., a free-form text field), with the full independence and discretion of the Hearing Officer;

6. Within three months of the date of this Order, the DOE will formalize an approach to sustaining knowledge of implementation processes, to enable experienced staff to onboard, train and mentor more junior staff;

7. Within three months of the date of this Order, the DOE will identify a file-sharing process and tool to improve transparency of all documentation presented as evidence at the hearing so that all pertinent documents can be continually accessed by the Implementation Unit;

8. Within six months of the date of this Order, the DOE will design a process by which the DOE can collect relevant implementation documentation from parents and guardians, parent representatives, and providers before the hearing; the DOE will conduct user research with parents to design a web-based and offline data collection process to facilitate this. The DOE will modify any necessary policies or technologies to allow parents to submit payment documentation as multiple files or different formats;

9. The DOE will make payments pursuant to the timelines in the Stipulation for Timely Implementation upon calculation or confirmation of the payment amount required by an Action Item in an Order and the payee being registered with the City. Based on the representations contained in the attached declaration, the DOE will identify for the Special Master the specific documents that the DOE will require for any payment and publicly provide a list of those documents on the DOE's website and as an attachment to every Payment Order;

10. The DOE will assess and implement a solution to support the submission and immediate approval of timesheets within six months of the date of this Order;

11. The DOE will assess the creation of a system systems-generated notification to inform the Implementation Unit that the Office of General Counsel/Special Education Unit has settled a case where payments are being distributed from an Order. The assessment will define the business and technical requirements to do so;

12. Implementation Unit staff will communicate all service orders and action items to New York City public schools, charter schools and State-approved non-public schools (as applicable) within a time that allows for the order to be Timely Implemented within the definition of the Stipulation. Within two months of the date of this Order, the Implementation Unit will assign resources to flag incoming orders deemed high priority, as the DOE and Plaintiffs agree upon the term “high-priority.” The Implementation Unit will triage and route orders accordingly. The DOE should consult and obtain feedback from Plaintiffs on what orders should be deemed “high priority.” Should the DOE and Plaintiffs fail to agree on what orders should be deemed “high priority,” the Special Master will advise the Parties and/or raise the issue with the Court for determination;

13. Within six months of the date of this Order, the DOE will define data and system requirements for monitoring incoming and tracking the ongoing implementation of orders comprised of service action items. Structured input by the hearing officer issuing the order should include deadline or due date types of input fields;

14. The DOE will (a) within six months of the date of this Order, deploy a customer support hotline and formal network structure for the Implementation Manager role to serve as the point-of-contact for the case and coordinate service action items across DOE offices, schools, attorneys and parents, (b) within six months of the date of this Order, design a plan for additional staffing within the Implementation Unit, and (c) within nine months of the date of this Order, fund

and recruit all additional personnel required by the staffing plan;

15. Within three months of the date of this Order, the DOE will formally designate Implementation Liaisons in all Districts and relevant Central offices (e.g., OPT, OSH, OSE) to act as points-of-contact in their respective areas for Implementation Managers to facilitate the arrangement of the ordered service(s). The DOE will also establish an escalation process when an Implementation Liaison is unavailable or unable to resolve a particular issue, with the escalation role being in an executive role within the respective DOE office;

16. Within six months of the date of this Order, the DOE will design an automated service to generate emails to parents, attorneys and advocates, and providers at key milestones in the administrative workflow of the implementation of an order, such as when an Implementation Manager unpacks the hearing order, when a service provider has been identified, when a payment action item has been authorized, and when the payment has been sent to the parent or provider. Within nine months of the date of this Order, the DOE will build the notification function and begin testing, and within twelve months of the date of this Order the DOE will deploy the function publicly;

17. Within three months of the date of this Order, the DOE will share common documentation among the internal DOE units that are involved in addressing due process complaints and the implementation of impartial hearing orders, and such other units as the Special Master may determine;

18. Within three months of the date of this Order, the DOE Implementation Unit will develop and communicate a clear procedure to inform schools and CSEs that an IEP meeting has been ordered and to ensure that the IEP was updated pursuant to that order;

19. Aside from the Medication Administration Form (MAF) and HIPAA forms, no

other documentation or evidence is required before implementation of an impartial hearing order for the provision of nursing services;

20. Within six months of the date of this Order, the DOE and the Office of School Health will modify any applicable procedures with nursing agencies to specify that postings and assignments for a nurse will remain open until an individual nurse has been formally assigned to a student rather than when the nursing agency has claimed the posting;

21. Within two months of the date of this Order, the DOE will formalize, designate, and confirm a liaison role in OPT, with an escalation path, to coordinate the implementation of transportation orders between the Implementation Unit, OPT, and OSH as applicable. The DOE will improve communications and track implementation of impartial hearing orders requiring transportation and provide monthly status updates to parents on the implementation of such orders, except where DOE is not in compliance with a transportation order, DOE will provide weekly updates to parents until existing deficiencies are cured;

22. Within six months of the date of this Order, the DOE will develop a recruitment and hiring strategy for new staff to meet the volume of backlogged orders that have not been implemented and orders as they are issued currently and in the future. The DOE will report to the Court on a quarterly basis its progress on hiring, including the nature and impact of any impediments to the implementation of that strategy;

23. The DOE will designate a dedicated resource to plan, develop, and deliver training materials for Implementation Unit and OGC staff and within six months of the date of this Order, create a training plan, develop materials, and deliver training pertinent to the implementation of orders. The DOE will update training materials to reflect changing policies and processes;

24. Within 45 days of the date of this Order, the Special Master and DOE will

inventory all functional issues of DAITS that impede the hearing order implementation workflow, including but not limited to system crashes, system outages, and system timeouts, and prioritize enhancements. Within six months of the date of this Order, the DOE will develop, test, and release the DAITS enhancements;

25. Within three months of the date of this Order, the DOE will assign an additional team of Implementation Unit Staff to expedite the implementation of any hearing order that is more than 35 days past the date of the hearing order. This team will continue its work until such time as orders are consistently being implemented within the implementation deadlines;

26. Within three months of the date of this Order, the Special Master and the DOE will identify the types of action items that require the greatest levels of effort to process as well as those most likely to contribute to the backlog of hearing order implementation. Based on the analysis, the DOE will develop solutions to remove the causes for the backlog attributable to the DOE;

27. Within one year of the date of this Order, the DOE will develop and deploy an accessible status indicator (web-based) for parents to easily view their case's status in the due process workflow;

28. The DOE will copy and collect data assets from implementation-related data sources, including but not limited to DAITS, IHS, FAMIS, and SESIS, to analyze for Implementation Unit workflow purposes. The DOE will analyze the data as they relate to the KPIs and, with the Special Master, identify solutions to problems and answer questions and hypotheses regarding failure to meet the Stipulation's benchmarks based upon the analysis. The DOE will report to Plaintiffs on a quarterly basis the results of this analysis and meet with the Plaintiffs on a quarterly basis to identify solutions to problems and answer questions and hypotheses regarding

failure to meet the Stipulations benchmarks based upon the analysis. The Special Master will include in reports to be provided to the Court every six months the DOE's analysis of such data;

29. Within six months of the date of this Order, the DOE will add the role of Implementation Systems Analyst to the Due Process Systems and Analytics Office to maintain documentation of workflows and continue the process of streamlining implementation processes;

30. Within six months of the date of this Order, the DOE will expand the LV Payment and Service Guidelines for Implementation Unit staff into an Operating Procedures Manual, and design and implement a professional development series on order implementation for DOE staff;

31. Within twelve months of the date of this Order, the DOE will centralize the collection, submission and sharing of pertinent documents among the DOE's impartial hearing representatives and Implementation Unit on a single platform. The DOE will establish a process by which documentation from families is captured by the DOE representative at the hearing;

32. Within eighteen months of the date of this Order, the DOE will build or procure a mobile application by which providers can enter their hours on their phone upon providing a service and the DOE will not require a traditional invoice for payment. The new invoicing process and tool will be designed to streamline the invoice approval process. The DOE will conduct user research with providers and parents to identify the mobile application

33. Within nine months of the date of this Order, the DOE will launch the process of monitoring and coordinating service action items, as defined in paragraphs 14-16;

34. Within one year of the date of this Order, the DOE will build the necessary document management functionality into the new special education data system to share documents across special education processes, as defined in paragraph 17;

35. For each home instruction order, the Implementation Unit Staff should confirm

the actual provision of home instruction as defining implementation of the order;

36. For each order placing a student at a DOE school, Implementation Unit Staff and OSE should confirm the actual placement as appropriate and meeting the need of the student, (per order and IEP);

37. The DOE will develop a continual process of updating training materials to reflect changing policies and business rules;

38. The DOE will continue to conduct ongoing user research on this proceeding and due process functions in an effort to modernize and redesign NYC DOE due process functions and align them with (migrate to) the special education system (SEDMS);

39. Every 120 days from the date of this Order, the Special Master will file a report with the Court on the DOE's progress in implementing the obligations that have come due in the prior 120 days pursuant to this Order (the "Obligations"). Each such report shall set forth (i) the Special Master's analysis as to whether each Obligation has been fulfilled; (ii) for any Obligation that the Special Master has concluded has been fulfilled, a detailed explanation of the basis for such conclusion; (iii) for any Obligation that has not been fulfilled, the impediments to fulfilling such Obligation, the measures necessary to overcome such impediments, and the timeframe for fulfilling the Obligation; (iv) for any Obligation that has not been fulfilled, a summary of the DOE's efforts to consult with Plaintiffs, the Special Master, or other relevant entities in order to fulfill the Obligation, or an explanation of good cause why no such consultation was held; (v) the next steps to be taken to fulfill the Obligations; and (vi) any additional recommendations of steps the DOE must take to meet the Stipulation's benchmarks, including but not limited to those identified as future recommendations in the Special Master's March 29, 2023 report. The DOE should provide all reasonable assistance to the Special Master in preparing this report, and

Plaintiffs will be permitted to provide feedback.

40. Within four months, the DOE will identify a part-time resource (50%) focused on recruiting and hiring staff for the Implementation Unit.

DATED:

July 19, 2023

Loretta A. Preska

The Honorable Loretta A. Preska
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LV, *et al.*,

Plaintiffs,

03 CV 9917 (LAP)

- against -

NEW YORK CITY DEPARTMENT OF
EDUCATION, *et al.*,

Defendants.


DECLARATION
OF JUSTINA K.
RIVERA

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JUSTINA K. RIVERA, under penalty of perjury, declares pursuant to 28 U.S.C.
§ 1746, that the following statements are true and correct:

1. I am the General Counsel in the Office of the Comptroller of the City of New York. I submit this declaration to clarify an issue raised with respect to paragraph 9 of the proposed order memorializing the recommendations made by the Special Master.

2. This is to confirm that the Office of the Comptroller does not require a parent or the New York City Department of Education to submit any documentation in order for a payment required by an impartial hearing order to be processed and made. The Comptroller's office does not make any actual payments to DOE payees, whether by check or EFT. The Comptroller's role in this regard is limited to reviewing and approving potential payees as a vendor as requested by DOE.

Dated: July 19, 2023
New York, New York



JUSTINA K. RIVERA